
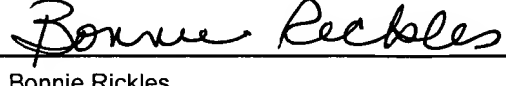
 <p>TRANSMITTAL FORM</p> <p>(to be used for all correspondence after initial filing)</p>	Application Number	09/990,702
	Filing Date	November 9, 2001
	First Named Inventor	Keith W. Diveley et al.
	Art Unit	3621
	Examiner Name	James A. Reagan
	Attorney Docket Number	020375-004010US
Total Number of Pages in This Submission		1

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): 1. Transmittal of Appellant's Brief Under 37 CFR 41.37 2. Appellant's Brief 3. Return Postcard
<input type="checkbox"/> Remarks: The Commissioner is authorized to charge any additional fees to Deposit Account 20-1430.		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Townsend and Townsend and Crew LLP		
Signature			
Printed name	Stephen F. Jewett		
Date	October 14, 2005	Reg. No.	27,565

CERTIFICATE OF TRANSMISSION/MAILING			
Express Mail Label: EV 720988636 US			
I hereby certify that this correspondence is being deposited with the United States Postal Service with "Express Mail Post Office to Address" service under 37 CFR 1.10 on this date October 14, 2005 and is addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Signature			
Typed or printed name	Bonnie Rickles	Date	October 14, 2005



Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL

For FY 2005

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 500

Complete if Known

Application Number	09/990,702
Filing Date	November 9, 2001
First Named Inventor	Keith W. Diveley et al.
Examiner Name	James A. Reagan
Art Unit	3621
Attorney Docket No.	020375-004010US

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____
☒ Deposit Account Deposit Account Number: 20-1430 Deposit Account Name: Townsend and Townsend and Crew LLP

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee
☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038

FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Small Entity	
	Fee (\$)	Fee (\$)
Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent	50	25
Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent	200	100
Multiple dependent claims	360	180

Total Claims **Extra Claims** **Fee (\$)** **Fee Paid (\$)** **Multiple Dependent Claims**
_____ -20 or HP = _____ x _____ = _____
Fee (\$) Fee Paid (\$)
HP = highest number of total claims paid for, if greater than 20
Indep. Claims **Extra Claims** **Fee (\$)** **Fee Paid (\$)**
_____ -3 or HP = _____ x _____ = _____
HP = highest number of independent claims paid for, if greater than 3

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

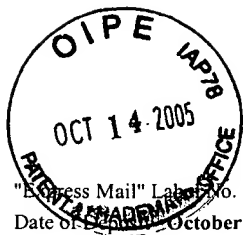
Total Sheets **Extra Sheets** **Number of each additional 50 or fraction thereof** **Fee (\$)** **Fee Paid (\$)**
_____ - 100 = _____ / 50 = _____ (round up to a whole number) x _____ = _____

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount) _____
Other: Filing a brief in support of an appeal _____ **500**

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 27,565	Telephone 303-571-4000
Name (Print/Type)	Stephen F. Jewett		Date October 14, 2005



"Express Mail" Label No. EV 720988636 US
Date of Deposit: October 14, 2005

PATENT

Attorney Docket No.: 020375-004010US

I hereby certify that this is being deposited with the United States Postal Service "Express Mail Post Office to Address" service under 37 CFR 1.10 on the date indicated above and is addressed to:

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450

Alexandria, VA 22313-1450

By: Bonnie Reckles

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS

In re application of:

Keith W. Diveley et al.

Application No.: 09/990,702

Filed: November 9, 2001

For: ELECTRONIC IDENTIFIER
PAYMENT SYSTEM AND METHODS

Customer No.: 20350

Confirmation No. 4413

Examiner: James A. Reagan

Technology Center/Art Unit: 3621

TRANSMITTAL OF APPELLANT'S
BRIEF UNDER 37 CFR 41.37

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Appellants hereby transmit one (1) copy of the brief required under 37 CFR 41.37 in connection with the appeal in the above-captioned application. The NOTICE OF APPEAL UNDER 37 CFR 41.31 was filed on August 15, 2005 and received by the Patent and Trademark Office on August 15, 2005.

Appellants hereby request that the fee for filing a brief in support of an appeal, \$500, or such greater or lesser amount as the Commissioner may deem is required by 37 CFR 41.20, be charged to Deposit Account No. 20-1430.

☒ The brief is being filed under 37 CFR 1.8 and the required Certificate of Mailing appears above.

☐ Appellants hereby request an oral hearing pursuant to 37 CFR 41.47 and hereby request that the fee for filing a request for oral hearing, \$, or such greater or lesser amount as the Commissioner may deem is required by 37 CFR 41.20, be charged to Deposit Account No. 20-1430.

☐ Appellants reserve the right to request an oral hearing pursuant to 37 CFR 41.47 following receipt of the Examiner's Answer.

☐ A Petition to Extend Time is enclosed.

Respectfully submitted,

TOWNSEND and TOWNSEND and CREW LLP

Date: October 14, 2005

By



Stephen F. Jewett
Reg. No. 27,565

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, CA 94111-3834
Telephone: (303) 571-4000

Enclosures: Appellant's Brief (in duplicate)

10-17-05

AF
JTW

"Express Mail" Label No. EV 720988636 US

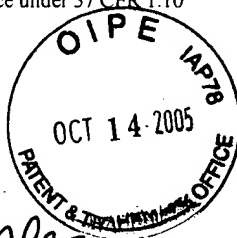
Date of Deposit October 14, 2005

PATENT

Attorney Docket No.: 020375-004010US

I hereby certify that this is being deposited with the United States Postal Service "Express Mail Post Office to Address" service under 37 CFR 1.10 on the date indicated above and is addressed to:

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450



By: Bonnie Reekles

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of:

Keith W. Diveley et al.

Application No.: 09/990,702

Filed: November 9, 2001

For: ELECTRONIC IDENTIFIER
PAYMENT SYSTEM AND METHODS

Customer No.: 20350

Confirmation No. 4413

Examiner: James A. Reagan

Technology Center/Art Unit: 3621

**APPELLANT'S BRIEF
UNDER 37 C.F.R. § 41.37**

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellant offers this Brief further to the Notice of Appeal mailed on August 15, 2005.

1. Real Parties In Interest

First Data Corporation is the real party in interest as the assignee of the above-identified application.

10/18/2005 TBESHAH1 00000023 201430 09990702

01 FC:1402 500.00 DA

2. Related Appeals And Interferences

No other appeals or interferences are known that will directly affect, are directly affected by, or have a bearing on the Board decision in this appeal.

3. Status Of Claims

Claims 1, 2, 4-7, 10, 12, 13, 15, 25, 29 and 50-53 are currently pending in the application. All pending claims stand rejected pursuant to an Office Action mailed June 24, 2005 (the third rejection of claims). The rejections of the claims are believed to be improper and are the subject of this appeal.

4. Status Of Amendments

Appellants have filed concurrently herewith an amendment under 37 CFR 1.116 to put the claims in better form for consideration on appeal. The claims appended hereto in the "Claims Appendix" incorporate such proposed amendment. No other amendments have been proposed or entered subsequent to the Office Action mailed June 24, 2005.

For the convenience of the Examiner, a separate copy of the Amendment under 37 CFR 1.116 is attached hereto as "Appendix A".

5. Summary Of Claimed Subject Matter

In the following summary, Appellants have provided exemplary references to paragraphs of the specification and to the drawings supporting the subject matter defined in the claims as required by 37 C.F.R. § 41.37. The specification and drawings also include additional support for other exemplary embodiments encompassed by the claimed subject matter. Thus, it should be appreciated that the references are intended to be illustrative in nature only.

Appellant's invention is a method and system for payment for "dial tone" or telephone services, where payment is made through a "payment service provider" or a host computer communicating with such a provider, rather than directly by the consumer. As observed in Appellants' specification, there may be drawbacks for some consumers who desire to

make real-time payments to instantly activate dial tone service. (Application, paragraphs 04 and 05). For example, certain consumers (e.g., "unbanked" customers) do not have the relationships with financial institutions to provide for making such payments or such activations. There is the need for such customers to have means for making payment and to have instant and/or uninterrupted access to phone services upon payment (paragraph 07).

The present invention provides for the consumer to activate phone service almost immediately upon providing an identifier associated with the phone service and a payment or payment information to a payment service provider (paragraphs 09 and 12). The application recites various embodiments of the invention in three independent claims (claims 1, 12 and 25).

The method of claim 1 is primarily illustrated in Fig. 15 (in conjunction with Fig. 14) and is described primarily at paragraphs 60 - 64. The method includes the payment service provider receiving an identifier and payment from the customer or consumer (step 324), creating an electronic record of the payment and identifier (step 326, and paragraph 63), communicating the electronic record to a host computer 302 (step 328, and paragraph 63), electronically sending the record from the host computer to a telecommunications switch 310 of the service provider (step 328, and paragraph 63), and activating the dial tone service upon receipt of the electronic record (paragraphs 56 and 63), with the switch configured to activate the service "substantially contemporaneously" with receipt of payment (i.e., before the consumer leaves the location where payment is made to the payment service provider -- see paragraph 56).

Claim 12 recites a system similar to the method of claim 12. The system in claim 12 includes a host computer 302 having a database with a record of identifiers associated with a dial tone service of a consumer provider (e.g., telephone company) -- see paragraph 56. A telecommunications switch 310 is in communication with the host computer 302 and is configured to activate dial tone service upon receipt of an electronic record from the host computer (paragraphs 56 and 63). The electronic record is defined as comprising an identifier, the customer phone number and payment information so that direct access is provided to phone service associated with the customer phone number (paragraphs 09, 35 and 56).

Claim 25 also recites a method, similar to claim 1, and is primarily illustrated in conjunction with Fig. 17. The method of claim 25 includes steps of a customer establishing an

account with a telephone service provider (step 346), the payment service provider receiving account information from the service provider (step 348), the payment service provider receiving periodic updates on the status of the account (paragraph 59), the payment service provider receiving payment and the account identifier from the customer (step 350; paragraph 66), entering payment information and the account identifier at a terminal and creating an electronic record (paragraph 66), communicating the electronic record to a host computer (paragraph 66), using the host computer database to verify the status of the account (paragraph 59), and electronically activating the phone service in substantially real-time, with the host computer providing the electronic record to a service activation processor configured to provide an activation command to activate the service upon receipt of the electronic record (paragraph 63).

Other embodiments of the invention are recited in the dependent claims.

For example, claims 2 and 29 recite the additional step of sending (e.g., electronically) the payment for service to a bank account of the service provider (step 332, Fig. 15). Claims 4 and 13 recite entering payment request information into a terminal (at the payment service provider computer 308) so that the electronic record can be transferred to the host computer (see paragraphs 50, 56 and 66). Claim 5 recites that the electronic record is transmitted from the host computer 302 to the consumer provider 306 (steps 328, 340 and 356; Figs. 15, 16 and 17). Claim 6 recites that the identifiers are associated with enrollment information, with the enrollment information sent from the consumer provider to the host computer (steps 320 and 322, Fig. 15; paragraphs 60-62). Claim 7 recites periodically receiving updated enrollment information (paragraph 59). Claim 10 recites that the identifier is associated with the payment amount (paragraph 56). Claim 15 recites a printer 309 coupled to a terminal to print a receipt (paragraph 54). Claims 50, 52 and 53 recite the activation being for the purpose of adding service time to an existing telephone service (paragraphs 63, 65 and 67). Claim 51 recites that the identifier may be a phone number (paragraph 09).

6. Grounds Of Rejection Presented For Review

A. Claims 1, 2, 4-6, 10, 12, 13, 15, 25, 29, and 50-53 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,903,633 ("**Lorsch**") in view of

O'Mahony et al., "Electronic Payment Systems" (1997) ("**O'Mahony**"), and further in view of U.S. Patent Application Publication No. 2002/0076018 ("**Banks**")

B. Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over **Lorsch** in view of U.S. Patent No. 5,799,072 ("**Vulcan**").

7. Argument

Claims 1, 12 and 25

Appellants believe claims 1, 12 and 25 are allowable over **Lorsch**, **O'Mahony** and **Banks**, as combined by the Examiner, and respectfully submit that the Examiner has failed to establish a prima facie case of obviousness.

Lorsch, the principal reference relied upon by the Examiner, discloses a prepaid phone card system, where phone card PINs and related account information may be stored in a database (Fig. 2, step 220). Cards may be purchased at a retailer with the use of a magnetic strip 22 on the card (Fig. 1; col. 3, lines 12-21) that carries the PIN and other information. The magnetic strip is read at a POS terminal of the retailer (step 240), and the stored data is transmitted to the database to verify that the phone card may be legitimately issued at the POS terminal (step 260).

Lorsch essentially describes the prior art prepaid phone card system that Appellants refer to at paragraph 05 of the Application. The purpose of **Lorsch** is to avoid the disadvantages of retailers having to pay in advance for bulk quantities of card, and to avoid wrongful use of the cards (col. 2, lines 55-58). **Lorsch** thus has a purpose quite different than Appellants' invention, which is to provide a means for "unbanked" customers to purchase telephone service through a payment service provider, to obtain immediate credit of a payment and substantially contemporaneously activate the service (to achieve direct and uninterrupted phone service access to phone service). In **Lorsch**, there is in fact no mention at all of how the cards are to be paid for by a consumer. Thus, **Lorsch** does not even discuss the very problem that Appellants' invention is concerned with, let alone provide features that suggest a solution to that problem.

In addition, **Lorsch** fails to teach or suggest various limitations recited in claim 1, such as "a payment service provider for receiving a set of identifiers" from a telephone service provider (consumer provider), "the payment service provider receiving a request from a customer...to pay for the dial tone service" that includes "one of the identifiers and a payment", "creating an electronic record of the payment and identifier", and "activating the dial tone service...substantially contemporaneously with receipt of payment by the payment service provider."

The Examiner combines **O'Mahony** and **Banks** with **Lorsch**, in order to overcome the deficiencies of **Lorsch**.

As best understood, **O'Mahony** is cited by the Examiner for its teaching of a micropayment system, which apparently the Examiner deems to be the same as a payment service provider. Appellants respectfully disagree, and believe that not only does **O'Mahony** not disclose a payment service provider as recited by Appellants, but that **O'Mahony** actually teaches away from the Appellants' claimed method and system.

O'Mahony discloses a system for managing micropayments, i.e., low value, individual transactions as small as \$.001 for internet purchases of data such as encyclopedia information, on-line songs, pages from newspapers, etc. (page 192). Since the money involved in the individual transaction may not justify the cost of conducting the transaction, **O'Mahony** proposes a broker that issues electronic currency ("scrip") that may be used to make purchases from multiple vendors. Scrip can be aggregated to justify a larger, more practical purchase price (e.g., \$5), but then can be used with different internet vendors for micropayment transactions (pages 194-195). The **O'Mahony** reference does not disclose the details of how the scrip may be purchased (other than mentioning "SET", "Ecash", or "credit card" -- pages 195 and 214).

O'Mahony does not teach or suggest a payment service provider that receives "a set of identifiers associated with a dial tone service", and that receives a request from a customer "to pay for the dial tone service", where the request includes "one of the identifiers and a payment," all of which is recited in claim 1. Even more importantly, **O'Mahony** teaches away from Appellants' invention in several respects. First, **O'Mahony** discloses a micropayment system (for extremely small value transactions), which is clearly distinguishable from a

prepayment of a telephone service (the prepayment of a phone service could not economically be done by a telephone company for very small micropayment amounts). Secondly, **O'Mahony** has the purpose of aggregating multiple payments for multiple vendors by purchasing electronic currency ("scrip") from a broker. This is clearly distinguishable from Appellants' system where a single payment is made to payment service provider for purchase of dial tone service from a single phone service provider. If one were to combine **Lorsch** with **O'Mahony**, the resulting system would be a telephone customer paying a broker (payment service provider) an amount which could be used by the customer to later make micropayments to (and to later receive phone service from) a plurality of telephone service providers. Such a system would not only be much different than Appellants' invention (where a payment is made to a single payment service provider for activating a specific "dial tone service of the consumer provider" that is associated with an "identifier"), but also would not solve the problem or purpose of Appellants invention, namely permitting an unbanked customer to make payment for dial tone service to a payment service provider so that "the dial tone service is activated substantially contemporaneously with receipt of payment by the payment service provider," as recited in claim 1.

Banks is cited by the Examiner for its teaching of "immediate activation" of purchased phone service and "direct and uninterrupted access" to the phone service.

Banks discloses a system for pre-purchase of discounted long distance phone minutes from a phone company (paragraphs 0016 and 0019). While **Banks** does disclose that the phone minutes, once purchased from the telephone company, are useable immediately (paragraph 0008), this is only because the purchase is directly from the phone company and there is no payment service provider involved in the transaction as recited in claim 1. In fact, when the subscriber contacts the telephone company directly to request the purchase of phone minutes, the cost is simply added or posted to the regular telephone bill that is later received from the phone company (paragraphs 0008, 00018, 0019 and 0020). **Banks** specifically mentions that the system eliminates the need for a subscriber to activate a phone card, contact a host computer, or use a credit card transaction since the subscriber does not have to pay for the purchase until later when the regular phone bill is received (paragraphs 0016 and 0020). Thus, **Banks** also teaches away from the present invention, since there is no payment received by a payment service

provider, but rather payment is made to the telephone company directly, and the phone service is not activated "substantially contemporaneously with receipt of payment by the payment service provider", but rather is activated well in advance of payment (i.e., payment is made after receipt of a regular telephone bill).

Independent claims 12 and 25 have limitations similar to claim 1 and are believed allowable for the same reasons as stated above. In addition, claim 25 recites the additional feature (among others) of the payment service provider "receiving periodic updates of the account information from the consumer provider", which feature is not shown or suggested in any one of the **Lorsch**, **O'Mahony** or **Banks** references.

Claims 2, 4-6, 10, 13, 15, 29, and 50-53

Dependent claims 2, 4-6, 10, 13, 15, 29, and 50-53 recite the features of independent claims 1, 12 and 25, and are believed allowable for at least the reasons stated above for those claims.

In addition, such claims recite additional features which are likewise not taught or suggested by **Lorsch**, **O'Mahony** and **Banks**, either alone or as combined.

For example, claims 2 and 29 recite the additional step of sending (e.g., electronically) the payment for service to a bank account of the service provider. While the Examiner cites **Lorsch** as teaching this limitation, **Lorsch** clearly does not have a payment service provider that receives payment, and thus could not disclose that payment being transferred (i.e., from the payment service provider) to an account of the consumer provider.

Claim 5 recites that the electronic record is transmitted from the host computer to the consumer provider. While the Examiner cites **Lorsch** for its disclosure of a centralized computer 30 and an invoicing computer 40, **Lorsch** does not disclose whether such computers are in fact the part of the retailer systems (associated with POS terminal 20) or are part of the consumer provider (telephone company). Appellants believe **Lorsch** thus does not teach a host computer and a consumer provider that are separate from each other (as is clearly implicit in claim 5).

Claim 6 recites that the identifiers are associated with enrollment information, with the enrollment information obtained from consumers and sent from the consumer provider to the host computer. The Examiner appears to argue that enrollment information is implicit with card "activation," as disclosed in **Lorsch**. Appellants respectfully disagree, since claim 6 recites that the enrollment information comes from "the consumer", and **Lorsch** does not disclose sending any kind of consumer enrollment information "from the consumer provider to the host computer," as recited in claim 6.

Claim 10 recites that the identifier is associated with the payment amount. The Examiner takes the position that **Lorsch** discloses an account number associated with "talk time", and thus discloses the recited feature of claim 10. Appellants respectfully disagree. While **Lorsch** may associate an account number with a predetermined amount of minutes of "talk time" (col.1, lines 41-48), **Lorsch** does not disclose how, where or when a consumer makes a payment. Thus, there is no disclosure of associating an "identifier" with a "payment amount", since there is no payment amount in **Lorsch**.

Claim 7

Appellants believe claim 7 is allowable over **Lorsch** and **Vulcan**, as combined by the Examiner, and respectfully submit that the Examiner has failed to establish a prima facie case of obviousness.

Claim 7 recites "periodically receiving updated enrollment information at the host computer", in addition to the various limitations of its parent claim 1.

Lorsch has been discussed above and fails to disclose several key elements of independent claim 1 which are included in the subject matter of claim 7. Furthermore, the specific limitation of claim 7 relating to "periodically receiving updated enrollment information" are not shown in either **Lorsch** or **Vulcan**.

Vulcan shows a call management system having a client database of tariffs that may be updated on a periodic basis (Abstract, lines 19-24). Nowhere in **Vulcan** is there a disclosure of updating "enrollment information," which is understood from Appellants'

application to relate to dial tone service enrollment, and which is clearly distinguishable from the tariff data updates in **Vulcan**.

8. Conclusion

Appellants believe that the above discussion is fully responsive to all grounds of rejection set forth in the Office Action dated June 24, 2005, and that such rejection should be reversed.

If, for any reason, the Examiner believes a telephone conference would expedite resolution of the issues raised in this appeal, the Examiner is invited to telephone the undersigned attorney at 303-571-4000.

Respectfully submitted,



Stephen F. Jewett
Reg. No. 27,565

Date: October 14, 2005

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, CA 94111-3834
Tel: 303-571-4000
Fax: 415-576-0300
SFJ/bhr
60608090 v1

CLAIMS APPENDIX

The claims pending in the application are as follows.

1. (previously presented) A payment service method, the method comprising:
 - a payment service provider receiving a set of identifiers from a consumer provider associated with dial tone service of the consumer provider, wherein the dial tone service is configured to provide direct and uninterrupted access to telecommunication services;
 - the payment service provider receiving a request from a customer of the consumer provider to pay for the dial tone service, wherein the request includes one of the identifiers and a payment;
 - creating an electronic record of the payment and the identifier;
 - communicating the electronic record to a host computer;
 - electronically sending the electronic record from the host computer to a telecommunication switch; and
 - activating the dial tone service upon receipt of the electronic record by the telecommunication switch, wherein communication of the electronic record to the telecommunication switch is configured to provide that the dial tone service is activated substantially contemporaneously with receipt of the payment by the payment service provider.
2. (original) A method as in claim 1, further comprising electronically transferring the payment to a bank account of the consumer provider.
3. (canceled)
4. (previously presented) A method as in claim 1, wherein the request is entered into a terminal having a processor, and wherein the electronic record is transferred electronically from the terminal to the host computer.
5. (previously presented) A method as in claim 4, wherein the electronic record is further transmitted from the host computer to the consumer provider.

6. (original) A method as in claim 4, wherein the set of identifiers are associated with enrollment information obtained from consumers enrolling with the consumer provider, and further comprising electronically sending enrollment information from the consumer provider to the host computer.

7. (original) A method as in claim 6, further comprising periodically receiving updated enrollment information at the host computer.

8-9. (canceled)

10. (previously presented) A method as in claim 1, wherein at least some part of the identifier is associated with a payment amount as determined by the consumer provider.

11. (canceled)

12. (previously presented) A payment system, comprising:
a host computer;

a database associated with the host computer, the database having a record of a set of identifiers that are associated with a dial tone phone service of a consumer provider; and

a telecommunication switch in communication with the host computer and configured to activate the dial tone service for a customer phone number upon receipt of an electronic record from the host computer, wherein the electronic record comprises an identifier from the set of identifiers, the customer phone number and payment information, and wherein the dial tone service provides for direct access to phone services from a phone associated with the customer phone number.

13. (previously presented) A system as in claim 12, further comprising at least one terminal having a processor that is capable of communicating with the host computer, and wherein the terminal is configured to receive the identifier, the customer phone number and the payment information and to transmit the identifier, the customer phone number and the payment information to the host computer.

14. (canceled)

15. (original) A system as in claim 13, further comprising a printer coupled to the terminal to print a receipt showing the payment.

16-24 (canceled)

25. (previously presented) A method for activating a phone service, the method comprising:

a customer establishing an account with a consumer provider for the phone service, wherein the customer provides information to the consumer provider to establish the account and receives an account identifier from the consumer provider, and wherein the account requires a payment to a payment service provider for activation of the phone service;

the payment service provider electronically receiving account information from the consumer provider;

the payment service provider receiving periodic updates of the account information from the consumer provider, wherein the updates comprise a status of the account;

the payment service provider receiving the required payment and the account identifier from the customer;

entering payment information and the account identifier into a terminal and creating an electronic record of the payment and the account identifier;

communicating the electronic record to a host computer;

using a database associated with the host computer to verify the status of the account; and

electronically activating the phone service in substantially real-time, wherein the host computer is configured to communicate the electronic record to a service activation processor of the consumer provider and the service activation processor is configured to provide an activation command to a telecommunication switch to activate the phone service for the account upon receipt of the electronic record.

26-28. (canceled)

29. (previously presented) A method as in claim 25, further comprising sending the payment to a bank account of the consumer provider.

30-49. (canceled)

50. (previously presented) The method as recited in claim 1, wherein the activating the dial tone service comprises adding service time to an existing dial tone service associated with the customer.

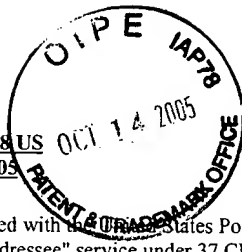
51. (previously presented) The method as recited in claim 1, wherein the one of the identifiers comprises at least a phone number associated with the customer.

52. (previously presented) The method as recited in claim 12, wherein the activation of the activation of the dial tone service comprises adding service time to an existing dial tone service associated with the customer telephone number.

53. (previously presented) The method as recited in claim 25, wherein the electronically activating the phone service comprises adding service time to an existing phone service associated with the customer.

COPY

"Express Mail" Label No. EV 720987998 US
Date of Deposit October 14, 2005



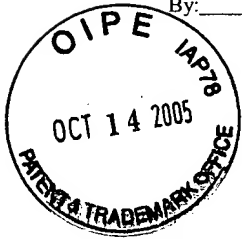
PATENT

Attorney Docket No.: 020375-004010US

I hereby certify that this is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to:

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By: Bonnie Pickles



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Keith W. Diveley et al.

Application No.: 09/990,702

Filed: November 9, 2001

For: ELECTRONIC IDENTIFIER
PAYMENT SYSTEM AND METHODS

Customer No.: 20350

Confirmation No. 4413

Examiner: James A. Reagan

Technology Center/Art Unit: 3621

AMENDMENT UNDER 37 CFR 1.116

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Amendment is proposed in order to put the claims in proper form for consideration on appeal, and is being filed concurrently Applicants' Brief under 47 CFR §41.37.

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper.

Remarks/Arguments begin on page 6 of this paper.

Amendments to the Claims:

This listing of claims will replace all prior versions, and listings of claims in the application:

Listing of Claims:

1. (previously presented) A payment service method, the method comprising:
 - a payment service provider receiving a set of identifiers from a consumer provider associated with dial tone service of the consumer provider, wherein the dial tone service is configured to provide direct and uninterrupted access to telecommunication services;
 - the payment service provider receiving a request from a customer of the consumer provider to pay for the dial tone service, wherein the request includes one of the identifiers and a payment;
 - creating an electronic record of the payment and the identifier;
 - communicating the electronic record to a host computer;
 - electronically sending the electronic record from the host computer to a telecommunication switch; and
 - activating the dial tone service upon receipt of the electronic record by the telecommunication switch, wherein communication of the electronic record to the telecommunication switch is configured to provide that the dial tone service is activated substantially contemporaneously with receipt of the payment by the payment service provider.
2. (original) A method as in claim 1, further comprising electronically transferring the payment to a bank account of the consumer provider.
3. (canceled)
4. (previously presented) A method as in claim 1, wherein the request is entered into a terminal having a processor, and wherein the electronic record is transferred electronically from the terminal to the host computer.

5. (previously presented) A method as in claim 4, wherein the electronic record is further transmitted from the host computer to the consumer provider.

6. (original) A method as in claim 4, wherein the set of identifiers are associated with enrollment information obtained from consumers enrolling with the consumer provider, and further comprising electronically sending enrollment information from the consumer provider to the host computer.

7. (original) A method as in claim 6, further comprising periodically receiving updated enrollment information at the host computer.

8-9. (canceled)

10. (previously presented) A method as in claim 1, wherein at least some part of the identifier is associated with a payment amount as determined by the consumer provider.

11. (canceled)

12. (previously presented) A payment system, comprising:

a host computer;

a database associated with the host computer, the database having a record of a set of identifiers that are associated with a dial tone phone service of a consumer provider; and

a telecommunication switch in communication with the host computer and configured to activate the dial tone service for a customer phone number upon receipt of an electronic record from the host computer, wherein the electronic record comprises an identifier from the set of identifiers, the customer phone number and payment information, and wherein the dial tone service provides for direct access to phone services from a phone associated with the customer phone number.

13. (previously presented) A system as in claim 12, further comprising at least one terminal having a processor that is capable of communicating with the host computer, and wherein the terminal is configured to receive the identifier, the customer phone number and

the payment information and to transmit the identifier, the customer phone number and the payment information to the host computer.

14. (canceled)

15. (original) A system as in claim 13, further comprising a printer coupled to the terminal to print a receipt showing the payment.

16-24 (canceled)

25. (Currently amended) A method for activating a phone service, the method comprising:

a customer establishing an account with a consumer provider for the phone service, wherein the customer provides information to the consumer provider to establish the account and receives an account identifier from the consumer provider, and wherein the account requires a payment to a payment service provider for activation of the phone service;

the payment service provider electronically receiving account information from the consumer provider;

the payment ~~supervisor~~ service provider receiving periodic updates of the account information from the consumer provider, wherein the updates comprise a status of the account;

the payment service provider receiving the required payment and the account identifier from the customer;

entering payment information and the account identifier into a terminal and creating an electronic record of the payment and the account identifier;

communicating the electronic record to a host computer;

using a database associated with the host computer to verify the status of the account; and

electronically activating the phone service in substantially real-time, wherein the host computer is configured to communicate the electronic record to a service activation

processor of the consumer provider and the service activation processor is configured to provide an activation command to a telecommunication switch to activate the phone service for the account upon receipt of the electronic record.

26-28. (canceled)

29. (previously presented) A method as in claim 25, further comprising sending the payment to a bank account of the consumer provider.

30-49. (canceled)

50. (previously presented) The method as recited in claim 1, wherein the activating the dial tone service comprises adding service time to an existing dial tone service associated with the customer.

51. (previously presented) The method as recited in claim 1, wherein the one of the identifiers comprises at least a phone number associated with the customer.

52. (previously presented) The method as recited in claim 12, wherein the activation of the activation of the dial tone service comprises adding service time to an existing dial tone service associated with the customer telephone number.

53. (previously presented) The method as recited in claim 25, wherein the electronically activating the phone service comprises adding service time to an existing phone service associated with the customer.

REMARKS/ARGUMENTS

This Amendment is being filed under 37 CFR §1.116 and concurrently with Applicants' Brief under §41.37.

The purpose of this Amendment is to amend claim 25 in order to (1) properly provide antecedent basis for the term "payment service provider" and (2) correct an obvious typographical error (the term "payment supervisor" should properly be "payment service provider").

Since this Amendment does not add new matter, does not change the scope of the claims, and does not touch the merits of the claims, but rather only puts the claims in proper form for consideration on appeal, entry is respectfully requested.

Respectfully submitted,



Stephen F. Jewett
Reg. No. 27,565

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 303-571-4000
Fax: 415-576-0300
SFJ:bhr
60611079 v1